

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

STANLEY A THOMPSON

PLAINTIFF

V.

CIVIL ACTION NO.4:04CV359-GHD-JAD

R. GREEN, ET AL

DEFENDANTS

REPORT AND RECOMMENDATION

On October 6, 2005, plaintiff, an inmate of the Mississippi Department of Corrections, appeared before the court for a hearing pursuant to *Spears v. McCotter*, 766 F.2d 179 (5th Cir. 1985) to determine if there exists a justiciable basis for his claim filed pursuant to 42 U.S.C. §1983.

Thompson complains that he was burned when a cart loaded with hot oatmeal collapsed, spilling the oatmeal on his arm. Thompson had been assigned to work in the kitchen at Unit 29. The defendants are all individuals employed by Valley Foods. He claims he told them numerous times that the cart was unsafe and they ignored him or laughed at him. This complaint sets out a tort claim, under Mississippi law against these Valley Foods employees, rather than a § 1983 action. The action should be brought in state court as this court has no jurisdiction over this claim.

Accordingly it is recommended that this complaint be dismissed without prejudice.

The parties are referred to 28 U.S.C. 636(b)(1) and Local Rule 72.2(D) for the appropriate procedure in the event any party desires to file objections to these findings and recommendations. Objections are required to be in writing and must be filed within ten days of this date. Failure to file written objections to the proposed finding and recommendations contained in this report within ten days from the date of filing will bar an aggrieved party from challenging on appeal both the proposed

factual findings and the proposed legal conclusions accepted by the district court *Douglass v. United Services Automobile Association*, 79 F.3d 1415 (5th Cir. 1996).

Plaintiff is directed to acknowledge receipt of this report and recommendation by signing the enclosed acknowledgment form and returning it to the court within ten days of this date. Plaintiff is warned that failure to comply with the requirements of this paragraph may lead to the dismissal of this lawsuit under F.R.Civ.P. 41(b) for failure to prosecute and for failure to comply with an order of the court.

This the 7th day of October, 2005.

/s/ JERRY A. DAVIS
UNITED STATES MAGISTRATE JUDGE